

This is a petition for writ of administrative mandamus challenging the State Personnel Board's ("Board") decision to uphold Petitioner Heather Rodriguez' dismissal from employment as a correctional officer for the California Department of Corrections and Rehabilitation ("Department"). The Department, which is the real party in interest, dismissed Rodriguez from service because of dishonesty in connection with an inmate investigation, and for her failure to report misconduct of another officer.

The Department argues that the petition is untimely and also that substantial evidence supports the Board's decision. The Court will deal with each issues separately.

As to timeliness, where an appeal is taken from a decision of the Board, the cause of action does not arise until the final decision of the Board. *See* Government Code §19630. The Department's brief argues that the petition was not filed and served within one year, as required by this provision. On the other hand, Petitioner contends that the Board decision does not become final until 30 days after service of the decision. 2 CCR §51.6.

The Board adopted the decision of the administrative law judge on September 3, 2008. The Petition was filed on August 27, 2009. The Petition was served on the Department on September 21, 2009, and on the Board on September 24, 2009.

The petition is timely because it was filed and served within one year of the date that the decision of the Board became final.

As to the merits, the Department claims that Rodriguez engaged in dishonest conduct in connection with an investigation of an inmate appeal ("602 appeal"). The Department claims that substantial evidence supports petitioner's dismissal because she recanted prior statements she had made during an interview by the investigating officer, Lieutenant Yett. The Department alleges that petitioner's formal interview was inconsistent with what she earlier told Lieutenant Yett, and that Rodriguez did not tell the truth during the investigation. In addition, the Department claims that petitioner failed to report misconduct of another officer.

Petitioner was a correctional officer at CMC where she was assigned to a relief post two days per week. She worked with two other officers, Cramins and Ayala, at that location. The administrative law judge affirmed the dismissal of Officer Rodriguez based upon three charges made by the appointing authority. (See AR page 3 Items 3, 4, and 5 at top of the page.)

The genesis of Rodriguez's eventual termination was a 602 appeal complaining that Officer Cramins made profane and demeaning comments toward an inmate. The investigation of Officer Cramins uncovered other reports of verbal misconduct by him.

On August 8, 2006, Lieutenant Yett interviewed Officers Ayala and Rodriguez in connection with the Cramins investigation. Although the interview was not recorded and

was fairly informal, Lieutenant Yett prepared a memorandum that reflected a summary of what Officer Rodriguez had stated during the interview. (See AR at page 108 et seq.)

Officer Rodriguez was provided with, and signed, an advisement of rights memorandum indicating that a Muslim inmate reported that Cramins called him a “fucking terrorist” and that Cramins had asked “why is he a Muslim if all he wants to do is blow things up...” (AR at 111) Rodriguez told Yett that she witnessed Cramins make “those exact statements” and that she witnessed profanity with inmates. She further stated that Cramins makes derogatory statements to homosexual inmates that she considered mostly banter.

On December 12, 2006, a more formal interview was conducted by Lieutenant Vaughn. At this second interview, Rodriguez denied hearing or observing Cramins call any inmate a “fucking terrorist”. She denied telling Lieutenant Yett that Cramins used profanity. Although admitting that she did tell Yett that Cramins makes derogatory comments to homosexual inmates, she could not elaborate on the statement because she “could not recall.” She also related that Cramins, in one interaction, engaged in banter with an inmate where Cramins and the inmate called each other “fag”.

The inconsistency between the statements made by Officer Rodriguez to Yett and Vaughn led to the notice of adverse action for dishonesty and unprofessional conduct. Eventually, the Department dismissed petitioner from service.

Petitioner appealed her dismissal to the Board. After an administrative hearing with evidence taken, the administrative law judge affirmed the dismissal. On September 3, 2008, the Board adopted the administrative law judge’s decision. This petition for writ of administrative mandate pursuant to CCP §1094.5 followed.

Board decisions are reviewed under the substantial evidence test because the State Personnel Board is an agency of constitutional origin. *Washington v. Board* (1981) 127 Cal.App.3d 636, 638-39 “Substantial evidence” is relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Such evidence must be reasonable, credible, and of solid value.) *California Youth Authority v. State Personnel Bd.* (2002) 104 Cal.App.4th 575, 584-585 (internal citations omitted.)

...[‘A court reviewing the evidentiary basis of an agency’s decision must consider all relevant evidence in the administrative record, including evidence that fairly detracts from the evidence supporting the agency’s decision.’ *California Youth Authority v. State Personnel Bd.* (2002) 104 Cal.App.4th 575, 585

Rodriguez argues that there is no evidence to establish that she made inconsistent statements during the investigatory interviews. She contends that the interview by Yett lasted only 10-15 minutes, and that there is no record of the interview. Rodriguez states that she did not read the advisement provided to her by Yett, although she acknowledges that he told her what was contained in the advisement. Rodriguez further argues that Yett’s report was only a synopsis of his interview with her and that it did not include a

verbatim account of questions, or the context of Rodriguez' statements. Moreover, petitioner claims prejudice because Lieutenant Yett's notes have been purged.

Rodriguez points out that the information presented in the synopsis at AR 108 is different from that in the advisement at AR 111. She claims that the synopsis only references that Officer Cramins used profanities and on occasions used racially discriminating statements. Thus, Rodriguez argues that her statements related to the facts set forth in the synopsis, and not in the advisement as found by the Board.

Continuing, petitioner claims that, absent evidence that Yett actually asked Rodriguez whether she heard Cramins call an inmate a "fucking terrorist," there can be no finding that Yett advised her of Cramins' specific comments at the beginning of the August 8 interview; nor, according to Rodriguez, can there be a finding that the statement attributed to her by Yett concerned whether she heard Cramins make those specific comments. With regard to profanities, Rodriguez points to page 80-82 of the AR to establish that she did advise Vaughn in the formal interview that Cramins did make derogatory comments to inmates.

The basic problem with petitioner's argument is her request that this Court reweigh the evidence, including the credibility determinations of the administrative law judge. The administrative law judge not only took testimony, but also made very specific findings related to the credibility of Cramins, Ayala, Yett and Rodriguez.

Based upon the demeanor of Yett and the lack of any evidence of any bias, Yett's testimony (along with that of Cramins and Ayala) was believed by the administrative law judge. [See AR at pp 9-10] Moreover, the administrative law judge concluded that Yett's testimony was straightforward, consistent and believable, and that no evidence of bias against the petitioner existed. (AR page 9)

In contrast, the administrative law judge found that Rodriguez was not a credible witness. Her testimony was selective in memory, evasive, argumentative, and she denied much of the important information she gave to Yett at the initial interview without good reason. (AR page 10) Ultimately the administrative law judge stated that he believed Yett's testimony that the statements Yett wrote down in his report were accurate quotations of what Petitioner told him. (AR page 9-10)

Government Code §11425.50(b) states in relevant part:

If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the statement shall identify any specific evidence of the observed demeanor, manner, or attitude of the witness that supports the determination, and on judicial review *the court shall give great weight to the determination* to the extent the determination identifies the observed demeanor, manner, or attitude of the witness that supports it. (emphasis added)

In *California Youth Authority v. State Personnel Bd.* (2002) 104 Cal.App.4th 575, the Court of Appeal concluded that Government Code §11425.50 (b)'s provision (concerning giving great weight to determinations observed demeanor, manner or attitude) is applicable to determinations both by the Board and the administrative law judge in Board adjudicatory proceedings.

The administrative law judge's decision here made specific reference to the demeanor, manner and attitude of the witnesses, which triggers application of Government Code §11424.50(b). The administrative law judge's findings are entitled to great weight. Moreover, having reviewed the record, the Court finds substantial evidence supporting the administrative law judge's conclusion that Rodriguez was not truthful.

In particular, Lieutenant Yett testified that he conducted the interview with Officer Rodriguez after a request from the Chief Deputy Warden to perform supplemental inquiry. (AR pp228 -231) Yett further testified that he discussed the allegations made by the inmate along with the information in the advisement with Rodriguez.

Yett added that the advisement did not entail everything. In his conversation with Rodriguez, Yett discussed additional information concerning an inmate being chased around with a toilet bowl brush, derogatory statements on a cell door and allegations of an inmate being locked in a mop room. (AR 231 lines 16-26) Petitioner did sign the advisement and she was instructed by Yett to be truthful in the interview.

Yett wrote his report on the same day he interviewed Rodriguez. He then submitted it to the hiring authority. (AR 266 lines 1-16)

Yett testified that, although the interview was conversational, Rodriguez told him that she was aware that Officer Cramins has used derogatory statements made towards the Muslim inmates and homosexual inmates and that it was a lot of banter. (AR at page 232 lines 1-17) Yett also testified that the majority of the material in the report comes from Rodriguez' statements that he had written down. (AR 268; Lines 21-27)

Prior to submitting the report to the hiring authority, Yett orally reviewed his notes with Rodriguez where he indicated that he would transpose the information into a memorandum to the hiring authority. Yett testified that Rodriguez said that was "ok". (See AR 272 lines 11-28)

Ultimately, Yett testified on re-direct that the statements attributed to Officer Rodriguez in the supplemental report were made by her (AR 273 lines 24-27) and that he wrote down verbatim what she told him. (AR 274; Lines 1-5)

In the formal interview conducted by Officer Vaughn, Rodriguez stated that she had not heard Cramins call an inmate a "fucking terrorist" or say "fuck yourself," nor had she heard him refer to inmates as homosexuals. (AR 78 lines 17-21 and page 82 lines 15-16) She told Vaughn that she was unaware of any staff misconduct in C Quad during the time that she worked there. (AR 79 lines 8-10) She stated that she told Lieutenant Yett that she

did not know about anything written on a cell door, and that she did not tell Yett that Cramins uses a lot of profanity (AR 79 lines 23-25) Although she could recall telling Yett that Cramins makes derogatory statements to the homosexual inmates, she could not sufficiently recall those events to elaborate on them. (AR 81 lines 2-6) She then stated that there were a couple of inmates that he would joke around with and they would call each other “fag”. (AR 81 lines 15-18)

The only misconduct that Rodriguez would acknowledge in the interview with Vaughn was Cramins calling an inmate a “fag” in one interaction. (AR 82 Lines 24-28 and AR 84 line 6)

The information provided in the formal interview is inconsistent with the information provided to Lieutenant Yett. Substantial evidence supports the conclusion that Lieutenant Yett accurately wrote petitioner’s statements in his report and that Rodriguez’ statements referred to the information reflected in the admonishment that she signed and that was orally related to her by Lieutenant Yett.

Moreover the testimony of Officers Ayala and Cramins concerning the proximity of Rodriguez to Cramins during the work shift, and Cramins’ behavior, could lead a reasonable trier of fact to conclude that Rodriguez should have been aware of Cramins’ unprofessional behavior and did not report it to a supervisor.

It is also clear from the testimony that Lieutenant Yett orally advised Rodriguez of information included in the *advisement*, and that Rodriguez’ statements in the Yett’s report were based upon the information he related to her from the advisement (AR 111). They could not be related to the information from the synopsis (AR 108) as that document was generated after the interview.

In consideration of the entire record (including the evidence that Petitioner contends detracts from evidence supporting the agency decision), the Court concludes that there is substantial evidence to support the findings of the Administrative Law Judge in this matter. Accordingly, the petition for writ of mandate is denied.¹

¹ Petitioner raises no argument concerning the appropriateness of the penalty of dismissal. In any event, dishonesty charges on the part of peace officers are treated with serious discipline including dismissal.

As stated in the Board’s Precedential Decision Jesus Reyes (1993) Board Dec. No. 93-04, courts have consistently held peace officers to a higher standard of conduct than other employees. In particular, dishonesty by law enforcement personnel has been treated with due harshness by the courts and by this Board as well. Jesus Reyes (1993) Board Dec. No. 93-04; Gregory Johnson (1992) Board Dec. No. 92-01; (See also *Paulino v. Civil Service Com.* (1985) 175 Cal.App.3d 962 where a CHP officer was dismissed for lying about this at his absences from work and *Warren v. State Personnel Bd.* (1979) 94 Cal.App.3d 95 where a peace officer was dismissed, in part, for lying about his participation in unlawful activity outside of duty hours.)

In *Ackerman v. State Personnel Board* (1983) 145 Cal.App.3d 395, the Court of Appeal stressed the seriousness with which dishonesty in law enforcement is viewed: ‘The CHP as a law enforcement agency charged with the public safety and welfare must be above reproach.’ [Citation].... CHP officers are held to the highest standard of behavior: the credibility and honesty of an officer are the essence of the function;

his duties include frequent testifying in court proceedings.... ...The position of a CHP officer by its nature is such that very little direct supervision over the performance can be maintained. The CHP necessarily must totally rely on the accuracy and honesty of the oral and written reports of its officers as to their use of state time and equipment. 'Any breach of trust must therefore be looked upon with deep concern. Dishonesty in such matters of public trust is intolerable.' (emphasis in original) Jerelyn Alkbers (1995) Board Dec. No. 95-17